SECURITIES AND EXCHANGE COMMISSION

AGENCY: Securities and Exchange Commission.

17 CFR Part 276

Investment Advisers; Uniform Registration, Disclosure, and Reporting Requirements; Staff Interpretation

[Release No. IA-1000]

50 FR 49835

December 5, 1985

ACTION: Statement of staff interpretive position regarding certain rules and forms.

SUMMARY: The Commission is publishing, in question and answer form, certain interpretive positions of the staff of its Division of Investment Management regarding Form ADV and other reporting and disclosure requirements applicable to investment advisers under the Investment Advisers Act of 1940. The purpose of this release is to: (i) Update a previous release which set forth staff positions regarding adviser registration and annual reporting requirements and (ii) provide guidance regarding recently adopted revisions to Form ADV.

DATE: December 3, 1985.

FOR FURTHER INFORMATION CONTACT: Jay Gould, Division of Investment Management, (202) 272-2107, Room 5135, 450 Fifth Street, NW., Washington, DC 20549.

TEXT: SUPPLEMENTARY INFORMATION:

I. Background

On October 15, 1985, the Commission adopted revisions to Form ADV, the registration form for investment advisers under the Investment Advisers Act of 1940, n1 to make the form a uniform form for advisers registering with the Commission and the forty jurisdictions which require investment advisers to register. Uniform Form ADV was developed jointly by the Commission and the North American Securities Administrators Association, Inc. ("NASAA"), based on Form ADV as adopted by the Commission in 1979, and amended in 1982 and 1983. n2 Uniform Form ADV will be effective on January 1, 1986. Advisers registered with the Commission on January 1, 1986 will be required to amend their registrations by filing the new form by March 31, 1986. Registrants are referred to IA Rel. No. 991 for further information concerning the filing requirements for the new form.

n 1 IA Rel. No. 991 (October 15, 1985) [50 FR 42903 (October 23, 1985)].

n 2 IA Rel. No. 664 (January 30, 1979) [44 FR 7370 (February 7, 1979)]; IA Rel. No. 805 (May 14, 1982) [47 FR 22505 (May 25, 1982)]; IA Rel. No. 840 (February 28, 1983) [48 FR 9521 (March 7, 1983)].

In 1981, the Commission published a question and answer release containing staff views concerning Form ADV and related registration and reporting requirements. n3 The purpose of the release was to provide guidance to registrants in complying with these requirements. While the release continues to be useful, portions of it now are out of date. The release published today revises IA Rel. No. 767 to reflect changes made in Form ADV and provide certain additional guidance concerning the new form. Three new questions have been added to incorporate positions

developed by the staff in recent years on custody and to provide guidance to registrants in calculating clients under new Items 17B and 20A of uniform Form ADV and employees under Item 17A. Upon publication of this release, IA Rel. No. 767 is rescinded.

n 3 IA Rel. No. 767 (July 21, 1981) [46 FR 38496 (July 28, 1981)].

II. Certain Staff Interpretive Positions Regarding Investment Adviser Disclosure and Reporting Requirements

A. Rule 204-1

1. Fiscal Year

Question: Paragraphs (b) and (c) of Rule 204-1 [17 CFR 275.204-1 (b) and (c)] require that, within 90 days of the end of its fiscal year, a registered investment adviser make certain amendments to its Form ADV and file an annual report on Form ADV-S. For the purposes of these requirements, may an investment adviser treat as its fiscal year an accounting period other than a calendar year or the period used for reporting income taxes?

Response: Yes. An adviser may use any twelve month accounting period, provided that the period is fixed or determinable and consistently used by the adviser. The term "fiscal year" is not defined in the Advisers Act or in the rules or forms thereunder, but, as commonly used, the term refers to a twelve month accounting period. For the purposes of paragraphs (b) and (c) of Rule 204-1, an investment adviser is not necessarily limited to a calendar year or the accounting period used for income tax purposes. For example, an investment adviser that is also registered with the Commission as a broker-dealer may elect to use the same accounting period used in filing financial statements under Rule 17a-5(d) [17 CFR 240.17a-5(d)] under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] ("Exchange Act"), provided that this period satisfies the conditions described above, even though a different accounting period might be used for income tax purposes.

2. ADV-S in Lieu of Amendments

Question: Paragraph (c) of Rule 204-1 requires a registered investment adviser to file an annual report on Form ADV-S within 90 days of the end of its fiscal year unless its registration has been withdrawn, cancelled or revoked prior to that date. Can Form ADV-S also be used to amend Form ADV?

Response: No. Form ADV-S is a separate form which must be filed independently of Form ADV or any amendments thereto. Amendments to Form ADV must be filed in accordance with the provisions of paragraph (b) of Rule 204-1. Even if an amendment to Form ADV is filed concurrently with the Form ADV-S filing, it must meet all the requirements applicable to amendments filed separately. Amendments should not be attached to Form ADV-S.

B. The Brochure Rule

1. Separate Brochure

Question: Paragraph (a) of the Brochure Rule [17 CFR 275.204-3(a)] requires certain investment advisers subject to registration under the Advisers Act to furnish clients and prospective clients with a written disclosure statement, which may be either a copy of Part II of an adviser's Form ADV or a separate written document ("brochure") "containing at least the information * * * required by Part II of Form ADV." For purposes of Rule 204-3(a), if an investment adviser uses a separate brochure, rather than a copy of Part II of its Form ADV, may the adviser omit from the brochure (i) the cautionary legend on page 1 of Part II of Form ADV (which states that the Commission has not approved the information contained in Part II) and (ii) negative responses to items in Part II?

Response: In the view of the staff, the cautionary legend on page 1 of Part II of Form ADV is not "information * * * required" by that part within the meaning of paragraph (a) of the Brochure Rule and, therefore, is not required to be included in any brochure used by an adviser. However, consistent with its obligations under the antifraud provisions of section 206 [15 U.S.C. 80b-6] and the provisions of section 208(a) [15 U.S.C. 80b-8(a)] of the Advisers Act, n4 an investment adviser should not make any representation, expressed or implied, that the Commission has approved either the information in the brochure or the investment adviser's qualifications or business practices.

n 4 Section 208(a) provides that "it shall be unlawful for any person registered under section 203 of (the Advisers Act) to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon the United States or any agency or any officer thereof."

Whether an investment adviser may omit from its brochure a negative response to any item in Part II of its Form ADV depends on the particular item and whether the "negative" response is material information which should be disclosed to any advisory client. For example, Item 3 of Part II requires an investment adviser to indicate on a checklist whether or not it provides advice with respect to certain types of securities enumerated in that item. A separate brochure used by an adviser which lists specific types of securities as to which the adviser gives advice generally would not have to disclose the types of securities about which the adviser does not provide advice, unless this disclosure was otherwise material. On the other hand, for example, a negative response to Item 5 of Part II, which would indicate that the adviser does not require its associated persons to meet any general standards of education or business background, should be disclosed in a brochure.

2. Termination Without Penalty

Question: Pursuant to paragraph (b)(1)(ii) of the Brochure Rule [17 CFR 275.204-3(b)(1)(ii)], an investment adviser may delay delivering its written disclosure statement to prospective clients until the time of entering into an advisory contract, if the client has a right to terminate the contract "without penalty" within five business days. Does a fee charged by an adviser for advisory services provided to a client who terminates its advisory contract within the five business day period constitute a "penalty?"

Response: No. A pro-rata charge for bona fide advisory services actually rendered during this five day period would not be deemed to be a "penalty" for the purposes of the Brochure Rule. However, a separate charge for "start-up" expenses normally would be considered a penalty within the meaning of the Brochure Rule.

3. Time of Annual Offer or Delivery

Question: Paragraph (c)(1) of the Brochure Rule [17 CFR 275.204-3(c)(1)] requires an investment adviser, annually, and without charge, either to deliver a written disclosure statement to its existing advisory clients or to offer, in writing, to deliver the statement upon written request from the client. Must an adviser make the annual offer to deliver, or actual delivery, on the specific anniversary date of each individual advisory client's contract?

Response: No. Paragraph (c)(1) of the Brochure Rule does not prohibit an adviser from making the required delivery or offer to some or all of its clients simultaneously, regardless of the date on which the advisory contract became effective, provided that the adviser offers to deliver, or actually delivers to advisory clients, a then current written disclosure statement at least once every 12 months. An adviser might, for example, establish a practice of making the offer or delivery required by paragraph (c)(1) at the beginning of the calendar year. If this is going to be the only time during the year that an offer or delivery will be made, then it should be made to every client,

including those who initially contracted with the adviser during the preceding year. An adviser may include the offer or delivery in a client billing or other routine correspondence.

C. Form ADV, Part I

1. Amending for Change in Form of Organization or State of Incorporation

Question: If an investment adviser changes its form of business organization (from a sole proprietorship to a corporation, for example) or its state of incorporation, must the adviser file a new application for registration on Form ADV, or may the change in business organization merely be reflected as an amendment to the adviser's existing Form ADV?

Response: Section 203(g) of the Advisers Act [15 U.S.C. 80b-3(g)] provides that a successor to the business of an investment adviser registered under the Advisers Act shall be deemed likewise registered, if it files an application for registration within thirty days from the date it succeeded to the business of the adviser, unless and until the Commission denies, revokes or suspends the registration of the successor adviser. A change in the form of an investment adviser's business organization generally would involve the creation of a new legal entity and section 203(g) would require the new entity to file a new or successor application for registration on Form ADV.

Rule 203-1 [17 CFR 275.203-1] under the Advisers Act permits an adviser to file an amendment on Form ADV to reflect a change in the adviser's state of incorporation or form of organization which will be deemed to be an application for registration, even though it is filed as an amendment. The adviser is required, however, to file the amendment within thirty days of the date of the succession and to pay the $150 registration fee for the new or successor registration. If the adviser files its successor application as a new application rather than as an amendment, it also must file Form ADV-W to withdraw the registration of the predecessor adviser.

It should be noted that a change in an investment adviser's form of business generally would involve the "assignment" or advisory contracts to the successor adviser within the meaning of section 205(2) of the Advisers Act [15 U.S.C. 80b-5(2)]. That section, in effect, prohibits an investment adviser that is subject to registration under the Advisers Act from assigning an advisory contract without the consent of the other party to the contract. Accordingly, the consent of clients to the assignment of their advisory contracts to the successor adviser would be required.

2. Time for Filing Successor Application

Question: Section 203(g) of the Advisers Act authorizes a successor to the business of an investment adviser to file an application for investment adviser registration within 30 days after the succession. As an alternative, may the person file a Form ADV prior to the succession?

Response: Yes. Section 203(c) of the Advisers Act [15 U.S.C. 80b-3(c)] authorizes an investment adviser, or any person who presently contemplates becoming an investment adviser, to file an application for registration with the Commission. Accordingly, a person who intends to succeed to the business of an investment adviser, and who, therefore, presumably contemplates becoming an investment adviser, may file a Form ADV prior to the succession.

3. Number of Employees

Question: Item 17A requires an adviser to indicate the number of employees who perform investment advisory functions for the adviser. In responding, when should an adviser count "owner-employees" and "independent contractors?"

Response: The term "employee" is not defined in the Advisers Act. Employees are included among the persons who are "person[s] associated with an investment adviser" as defined in section 202(a)(17) [15 U.S.C. 80b-2(a)(17)] of the Advisers Act. The staff interprets the term employee to

include independent contractors whose activities are controlled by the investment adviser. n5 An independent contractor is subject to the control of an employer if their relationship is one of principal and agent or master and servant. Accordingly, in responding to Item 17A of Form ADV an adviser should count among its employees any persons, including those denoted "independent contractors," performing investment advisory functions for the adviser whose activities are controlled by the adviser. Any "owner-employee" performing investment advisory functions for the adviser also should be counted.

n 5 This is consistent with the Commission's long-standing interpretation of the status of independent contractors as employees of broker-dealers under the Exchange Act. See letter to Gordon S. Macklin, President, National Association of Securities Dealers, from Douglas Scarff, Director, Division of Market Regulation, (available July 18, 1982). To the extent that an independent contractor performed investment advisory functions for an investment adviser but was not under the control of that adviser, the independent contractor's activities would require the independent contractor to be separately registered as an adviser with the Commission.

4. Number of Clients

Question: In calculating the number of clients to whom the applicant provided advisory services during the last fiscal year in Items 17B and 20A of Form ADV, should "clients" who have paid no fee in that fiscal year be counted?

Response: An adviser who provides investment advice to a person should count that person as a client for the fiscal year in which the services were provided. If a person prepays its advisory fee in one year and receives services on an ongoing basis during the following year, the adviser should count that person as a client for the year payment was received and for every year services were provided. If an adviser charges for services after they are rendered, a person who receives advisory services in the latter part of one fiscal year but is not billed until the following fiscal year should be counted as a client in both years, if services were provided in each year.

A client who receives advisory services on an ongoing basis, should be counted as a client every year services are provided irrespective of when payment is received. In the staff's view an adviser would violate section 208(d) n6 of the Advisers Act if the adviser either required prepayment of fees in a fiscal year or deferred payment of fees until the next fiscal year in order to avoid registration or reporting requirements under the Act.

n 6 Section 208(d) [15 U.S.C. 80b-8(d)] provides that, "It shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of this title or any rule or regulation thereunder."

5. Automatic Payment of Advisory Fees Deemed Custody

Question: If an adviser bills its client's account by sending the bill directly to the custodian holding the client's funds and securities, does the adviser have custody for purposes of Rule 206(4)-2 [17 CFR 275.206(4)-2] and Form ADV Part I, Item 13?

Response: Generally, the staff's position is that a person has custody if it directly or indirectly holds client funds or securities, has any authority to obtain possession of them or has the ability to appropriate them. Accordingly, an adviser may be deemed to have custody where the adviser is paid automatically from client funds upon presentation of a bill to the custodian of the client's account. The staff takes the position that the adviser will not be deemed to have custody under these circumstances, however, if: (1) The client provides written authorization permitting the adviser's fees to be paid directly from the client's account held by an independent custodian, (2) the adviser sends to the client and the custodian at the same time, a bill showing the amount of the fee, the value of the client's assets on which the fee was based, and the specific manner in which the adviser's fee was calculated, and (3) the custodian agrees to send to the client a

statement, at least quarterly, indicating all amounts disbursed from the account including the amount of advisory fees paid directly to the adviser. n7

n 7 See Lawwill Sena & Weller Inc. (pub. avail. April 11, 1983). This position was first established in Investment Counsel Association of America, Inc. (pub. avail. July 9, 1982).

D. Form ADV, Part II

1. Filing Part II When Exempt From Brochure Rule

Question: Is an investment adviser whose contracts are exempt from the Brochure Rule's delivery requirements -- for example, an investment adviser to an investment company or an investment adviser providing only impersonal advisory services -- required to complete Part II of Form ADV?

Response: Yes. Although the Brochure Rule exempts from the disclosure statement delivery requirements investment advisers that provide certain types of services, the rule does not exempt them from the requirements of section 203(c) under the Advisers Act and Rule 203-1 thereunder [17 CFR 275.203-1] regarding the requirements for filing both parts of Form ADV.

2. Negotiable Fee Schedules

Question: In response to Item 1 of Part II, may an investment adviser which charges for its services in accordance with a fee schedule, but which also permits negotiation of fees, simply set forth the basic fee schedule and state that its fees are negotiable, or must the adviser disclose the range within which fees can be negotiated?

Response: The extent of disclosure required by Item 1 of Part II concerning the adviser's fees will depend on the facts and circumstances. As a general matter, if an adviser's usual fees are negotiable, but only within a range, the adviser would have to disclose his basic fee schedule, as well as the range within which fees can be negotiated. On the other hand, if fees are negotiable, but no particular range has been established either explicitly or by practice, a general statement that fees are negotiable, together with the inclusion of the basic fee schedule, generally would be adequate.

3. Discretion Over Commission Rates

Question: If an investment adviser exercises discretion as to the commission rates at which securities transactions for client accounts are effected, must it, in response to Item 1 of Part II, disclose the commission rates charged client accounts, as well as its advisory fees?

Response: An adviser exercising brokerage discretion for client accounts generally would not have to disclose, in response to Item 1 of Part II, the commission rates at which securities transactions are effected for client accounts unless these charges form the basis, in whole or in part, for the adviser's compensation. The investment adviser, however, would have to describe in detail, in response to Item 12 of Part II, its brokerage placement practices.

4. Disclosure of Background and Business Practices for New Advisers

Question: If an applicant for registration is a person who has not previously engaged in the advisory business, must the applicant complete Part II of Form ADV, which requires information as to the background and business practices of an adviser?

Response: Yes. All applicants for registration as an investment adviser must complete fully Form ADV, including Parts I and II. An applicant who is new to the advisory business, should respond to the various items in Part II in light of the advisory services the adviser intends to provide, being

careful to make clear the prospective nature of the advisory activities so as not to make any misleading statements.

5. Investment Supervisory Services and Management Not Involving Investment Supervisory Services

Question: What is the difference between providing "investment supervisory services" as defined in Item 1A(1) of Part II and "manag[ing] investment advisory accounts not involving investment supervisory services" within the meaning of Item 1A(2) of Part II?

Response: "Investment supervisory services," as used in Item 1A(1), means the giving of continous advice to clients as to the investment of funds on the basis of the individual needs of each client. n8 On the other hand, Item 1A(2) refers to the management of accounts where either the individual needs of the clients are not considered or where the management services are not continuous. An example of an advisory service which would be covered by Item 1A(2), and not by Item 1A(1), would be an account management service provided only with respect to a particular class of securities owned by a client (e.g., options) where it is understood that the adviser will not consider the individual needs of a particular client as distinct from the needs of any other client.

n 8 This definition is incorporated from section 202(a)(13) of the Advisers Act [15 U.S.C. 80b-2(a)(13)].

6. Use of Schedule D To Disclose Business Background

Question: Item 6 of Part II of Form ADV requires an investment adviser to provide certain information concerning the education and business background of its principal executive officers, and each member of the adviser's investment committee, or those persons who determine or approve the investment advice given by the adviser. May an investment adviser make reference to Schedule D of Form ADV which requires, in part, the same information required by Item 6, rather than setting forth that information in full in response to Item 6 itself?

Response: Item 6 may be answered by reference to Schedule D. However, in furnishing this information to an advisory client or prospective advisory client pursuant to the Brochure Rule, a reference to Schedule D is adequate only if the schedule is furnished, together with a copy of Part II of the adviser's Form ADV, or is included as part of a brochure, and the presentation of the information in that manner is not otherwise misleading.

7. Broker-Dealer Registration

Question: Item 8A of Part II requires an investment adviser to disclose whether it is registered as a broker-dealer. Is this item intended to encompass registrations as a broker-dealer in other jurisdictions, such as the states, as well as with the Commission?

Response: Yes. Item 8A covers broker-dealer registration in other jurisdictions. Therefore, if an investment adviser is registered as a broker-dealer in a state but not under the Exchange Act, the adviser should respond affirmatively to Item 8A.

8. Adviser Brokerage Discretion

Question: Item 9B of Part II asks whether the applicant "effects" securities transactions for compensation as a broker or agent for any investment advisory client. Certain investment advisers have discretionary authority to place orders with brokers to execute securities transactions for client accounts but do not receive any specific compensation or commission for this function. However, they do receive discretionary brokerage authority. Would this activity constitute "effecting" a transaction in securities?

Response: For the purposes of Item 9B, an adviser that is vested with brokerage placement discretion by its clients, but that does not execute transactions in securities for clients and does not receive any specific compensation in connection with securities transactions for clients would not, in the view of the staff, be deemed to be "effecting" securities transactions for client accounts solely by virtue of this activity. It should be noted that Item 12 of Part II calls for disclosure about brokerage discretion.

9. Account Reviews

Question: Does the account review process required to be described in response to Item II of Part II refer only to internal review procedures used by an investment adviser, or does it also refer to an account review conducted by a third party?

Response: Item 11 is intended to cover all procedures, including internal and external ones, employed by an investment adviser in connection with the review and evaluation of client accounts.

E. Balance Sheet Requirement: Item 14 of Part II of Form ADV

1. Accounting Method for Balance Sheet

Question: Must the balance sheet filed pursuant to Item 14 of Part II be prepared on a cash basis or on an accrual basis? If the balance sheet is required to be prepared on an accrual basis, must all of the adviser's internal books and records also be prepared on an accrual basis?

Response: As specified in Item 14 of Part II, the required balance sheet must be prepared in accordance with generally accepted accounting principles, which require that, among other things, the balance sheet be prepared on an accrual basis. An investment adviser's internal books and records may be maintain on either a cash or accrual basis, provided that the adviser maintains the books and records necessary to reconcile the adviser's cash accounts (as shown on its internal books and records) with the corresponding accounts on the balance sheet as restated and presented on an accrual basis.

2. Balance Sheet Preparation for New Registrant

Question: If the applicant is a newly formed corporation or partnership subject to the balance sheet requirement of Part II, Item 14, and is just commencing business as an investment adviser, it will have no prior fiscal year end for which to file a balance sheet. If the applicant is such a company or if it is a sole proprietorship which has not previously engaged in business as an investment adviser, how should it respond to Item 14 of Part II of Form ADV?

Response: If an applicant subject to the balance sheet requirement of Part II Item 14 has had no prior fiscal year end for which to file a balance sheet or is a sole proprietor who has not previously engaged in business as an investment adviser, no balance sheet is required to be filed. However, the adviser is required to amend its Form ADV by filing a balance sheet in response to Item 14 of Part II within 90 days after the end of its first fiscal year, and each fiscal year thereafter, as required by paragraph (b) of Rule 204-1.

3. Balance Sheet Required When Adviser Has Custody

Question: Item 14 requires the filing of an audited balance sheet if the adviser has custody or possession of clients' funds or securities or requires the prepayment of advisory fees six months or more in advance and in excess of $500 per client. If an adviser has custody or possession, or requires prepayment of fees, with respect to only a few of its clients, must the adviser nonetheless file an audited balance sheet in response to Item 14 of Part II?

Response: Yes. However, the audited balance sheet may be omitted from a brochure provided to a client as to whom the adviser does not have custody or possession of client funds or securities or does not require prepayment of fees of more than $500 and for more than six months in advance.

4. Balance Sheet Required When Registrant Is a Subsidiary

Question: Can a wholly owned investment adviser subsidiary satisfy the balance sheet requirements of Item 14 of Part II by filing its parent corporation's consolidated balance sheet?

Response: No. A balance sheet for the actual registrant must be filed.

5. Balance Sheet Required When Affiliate Has Custody

Question: If an investment adviser is deemed to have custody or possession of clients' funds or securities because the funds or securities are held by an affiliate of the investment adviser, can the investment adviser satisfy the audited balance sheet requirement of Item 14 of Part II by filing an audited balance sheet of the affiliate instead of an audited balance sheet for the investment adviser itself?

Response: No. The balance sheet required by Item 14 of Part II is that of the registrant. However, it should be noted that custody by an affiliate of an investment adviser is not deemed to be custody by the investment adviser in all circumstances. Whether custody by an affiliate of the investment adviser will trigger the audited balance sheet requirement is a factual matter based on the actual relationship between the investment adviser and the affiliate. See Crocker Investment Management Corp. (pub. avail. April 14, 1978) for a discussion of the staff's view of the factors to be considered in determining whether the adviser is deemed to have custody.

F. Schedules to Form ADV

1. Schedule A and Shareholder Disclosure

Question: For purposes of completing Schedule A, when must an applicant which is wholly or partially owned by a corporate parent provide information concerning shareholders of the parent, and how should such information be presented?

Response: As provided in Items 3 and 4 of Schedule A, all intermediate owners, as well as the ultimate owners of the applicant must be disclosed unless the intermediate owner is subject to the reporting requirements of sections 12 or 15(d) of the Exchange Act. Thus, if a corporation owns 5% or more of the adviser, disclosure is required of shareholders that own 5% or more of a class of equity security of that corporation. If one of these shareholders is a corporation, similar disclosure of that corporation would be required until the ultimate owner is disclosed. If the adviser is a partnership, disclosure is required of general partners or any limited or special partners that have contributed 5% or more of the partnership capital. If one of the partners is a corporation, disclosure of all 5% shareholders would be required until the ultimate owner is disclosed. If the intermediate corporation or partnership is subject to the reporting requirements of sections 12 or 15(d) of the Exchange Act, disclosure of that corporation's shareholders or partnership's partners is not required.

The method for indicating on Schedule A an indirect ownership interest in an investment adviser is to list the corporate parent's shareholders required to be so listed by virtue of their beneficial ownership of the adviser's equity securities. In the column designated "Ownership Code," the applicant should write "indirect" to indicate the indirect nature of the ownership interest for each listed shareholder.

2. Schedule A -- Beginning Date

Question: Item 7 of Schedule A requires an applicant to disclose the "beginning date" of the relationship with the applicant for each of the persons reported on in the schedule. What does "beginning date" refer to?

Response: "Beginning date" refers to the earliest date on which a relationship arose with the adviser which was required to be disclosed on Schedule A. For example, if John Smith joined XYZ Advisers, Inc. in June 1978 as a research assistant and was promoted to vice president in August 1979, the first reportable event on Schedule A would have been Mr. Smith's promotion to vice president in August 1979, which date and relationship should have been disclosed on Schedule A to the Form ADV of XYZ Advisers, Inc. His subsequent promotion to president in July 1980 involves a change in relationship which would be disclosed on Schedule A, although the beginning date would remain as August 1979.

3. Schedule D -- Employment and Affiliation History

Question: In answering Item 6 of Schedule D, must an applicant list each person's complete employment or affiliation history for the past ten years, including each position held with a particular employer, or may he provide only the identities of each person's employers?

Response: It is necessary to list on Schedule D all places of employment for the past ten years, for each person for whom a Schedule D is filed. n9 However, it is not necessary to enumerate each position held at each place of employment. It is sufficient to provide the last position held with each employer, so long as the period that such position was, or has been, held is disclosed in the column headed "Exact Nature of Connection or Employment."

n 9 It should be noted that to the extent additional space is required to respond to Item 6, or any other item of Schedule D, the instructions to Form ADV require that an additional copy of Schedule D be used. (The staff will not object, however, if the blank space on page 1 of Schedule D is used for continuing responses to items 7 or 8 of Schedule D if the continued item is appropriately identified). Schedule F cannot be used as the continuation sheet for Schedule D.

Regulatory Flexibility Act

The views of the Commission's Division of Investment Management concerning Rules 203-1, 204-1, 204-3 and 206(4)-2 and Forms ADV and ADV-S are not rules and therefore are not subject to the Regulatory Flexibility Act [15 U.S.C. 600 et seq.]

List of Subjects in 17 CFR Part 276

Investment advisers, Securities.

Accordingly, Part 276 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding Investment Advisers Act Release No. IA-1000, statement of staff interpretive positions as to investment adviser disclosure and reporting requirements. Investment Advisers Act Release No. IA-767 is hereby removed.

By the Commission.

John Wheeler,
Secretary

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